

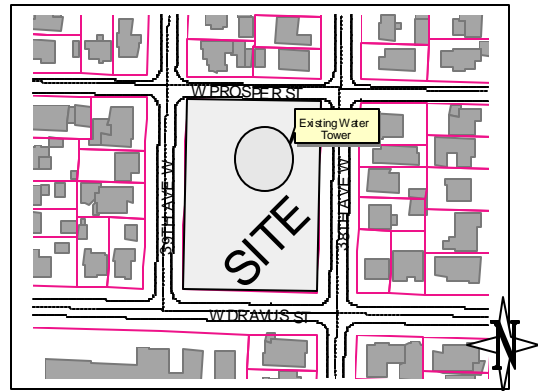


City of Seattle

Gregory J. Nickels, Mayor
Department of Planning and Development
D. M. Sugimura, Director

CITY OF SEATTLE
ANALYSIS AND DECISION OF THE DIRECTOR OF
THE DEPARTMENT OF PLANNING AND DEVELOPMENT

Application Number: 3003747
Contact Person: Norris Bacho
Service Provider: ClearWire
Address of Proposal: 3800 West Dravus Street



SUMMARY OF PROPOSED ACTION

Land Use Permit to install a minor communication utility (three panel antennas and seven microwave dishes - three sectors) on the perimeter handrail of an existing city owned water tank (Magnolia Water Tank). The equipment cabinet will be located at the base. The Metricom minor communication utility will be removed and the other minor communication utilities will remain.

The following approvals are required:

Administrative Conditional Use - To allow a minor communication utility on an existing public facility in a single-family zone.

SEPA - Environmental Determination - Chapter 25.05, Seattle Municipal Code

SEPA DETERMINATION

☐ EXEMPT ☐ DNS ☐ MDNS ☐ EIS
☒ DNS with conditions
☐ DNS involving non-exempt grading or demolition involving another agency with jurisdiction.

BACKGROUND DATA

Site Description

The subject site is zoned Single Family 5000 (SF 5000) and occupies the entire block bounded by West Prosper to the north, 39th Avenue West to the west, 38th Avenue West to the east and West Dravus Street to the south. The site contains approximately 1.27 acres, relatively flat and developed with an approximate 100-foot water tower towards the northerly portion of the site. The site is located on a geographic high point in the Magnolia Neighborhood and the surrounding areas generally slope downward in all directions. The water tower has existing minor communication utilities located on the support legs and handrail of the catwalk located on the main body of the water tower. The associated equipment

cabinets are located on a concrete pad within the footprint of the water tower. The following permits have been issued for the site allowing minor telecommunication utilities: Master Use Permit (MUP) number 9603250 proposed 12 antennas, MUP number 9904595 proposed 16 antennas, MUP number 9904076 proposed 9 antennas and MUP number 9906291 proposed 9 antennas.

Proposal Description

ClearWire proposes to install a wireless broadband internet facility consisting of three panel antennas and seven microwave antennas. The antennas and dishes will be located on the handrail (located approximately 71 feet above grade) of the catwalk located on the main body of the water tower. The associated equipment cabinet will be located on an existing concrete pad located within the footprint of the water tower. ClearWire will be essentially replacing the now defunct Metricom and will remove eleven existing antenna mounts (out of sixteen mounts), associated antennas and equipment cabinets. ClearWire will use five existing antenna mounts to locate their antennas on and will be locating their equipment cabinet in the same area as Metricom's was. Additionally, ClearWire will be using Metricom's existing electrical meter, cable tray and coax for power. The areas where the old Metricom antennas mounts were located will be restored to match the water tower and the proposed mounts and antennas will be painted to match the water tower as well.

Surrounding Area Description

The surrounding areas are zoned SF 5000 and developed with residences with the exception of the property to the south which was formerly an elementary school. The closest commercial and multi-family zones are over a quarter of a mile away toward the northeast and southeast. These areas are located on a substantially lower elevation point than the subject site.

Public Comment

The application was deemed to be complete on November 11, 2005 and a revised notice of application was sent on January 12, 2006. The 14 day public comment period ended on January 25, 2006. A public meeting was held on March 28, 2006 at the Magnolia Community Center. Several public comments were received through the public notice process and public meeting. The primary issues were related to public health impacts due to radiofrequency (RF) electromagnetic exposure and visual impacts. With reference to public health, the City of Seattle does not have jurisdiction over health related issues concerning these facilities and is required to follow Federal Communications Commission's (FCC) guidelines. The applicant has submitted a "Statement of Federal Communication Commission Compliance for Personal Wireless Service Facility" to demonstrate the proposed antennas facilities and the site as a whole comply with FCC's limits for human exposure to RF electromagnetic fields and an accompanying "Affidavit of Qualification and Certification" for this proposed facility giving the calculations of radio frequency power density expected from this proposal and attesting to the qualifications of the Professional Engineer who made this assessment. Finally, an outside third party reviewer (Letter from Dean Busch dated June 5, 2006) selected from a Director approved list has reviewed the applicant's technical information and finds the information submitted is accurate. The letter from Dean Busch also specifically addressed issues raised by Chris DeBruler in an email dated March 26, 2006. The public comments can be found in the MUP file.

The visual impacts related to the proposal are discussed in detail immediately below.

ANALYSIS AND CRITERIA - ADMINISTRATIVE CONDITIONAL USE

Section 23.57.010.C of the Seattle Municipal Code (SMC) provides that a minor communication utility may be permitted in a Single-Family Zone with the approval of an administrative conditional use permit when the establishment or expansion of a minor communication utility, except on lots zoned Single Family or Residential Small Lot and containing a single family use residence or no use subject to the requirements of this section enumerated below. All supporting documentation referenced within this decision can be found in MUP file no. 3003747.

1. The proposal shall not be substantially detrimental to the residential character of nearby residentially zoned areas, and the facility and the location proposed shall be the least intrusive facility at the least intrusive location consistent with effectively providing service. In considering detrimental impacts and the degree of intrusiveness, the impacts considered shall include but not be limited to visual, noise, compatibility with uses allowed in the zone, traffic, and the displacement of residential dwelling units.

Director's Rule 8- 2004 clarifies terms and provisions regarding minor communication facilities in all zones which are directly applicable in this instance. The terms "least intrusive location", "least intrusive facility" and "effectively providing service" are defined as the following:

"Effectively providing service" means the level of service preferred by the applicant. The preferred level of service will not be evaluated by the Director, but will instead be used as a comparison in the evaluation of potential alternate locations for the proposed minor communication utility.

"Least intrusive location" means that, except deviations as allowed by the Director, the location of the proposed minor communication utility must comply with the following order of preference. Industrial zones are the least intrusive location, and Single Family and Residential Small Lot zones (non-arterial) are the most intrusive locations:

- a. Industrial zones*
- b. Downtown zones*
- c. Commercial zones*
- d. Neighborhood Commercial zones*
- e. Multifamily zones (arterial)*
- f. Multifamily zones (non-arterial)*
- g. Single Family and Residential Small Lot zones (arterial)*
- h. Single Family and Residential Small Lot zones (non-arterial)*

The Director may allow a deviation from the order of preference, provided that the Director finds that such a deviation would result in a less intrusive location than would otherwise be provided under strict adherence to the order of preference.

"Least intrusive facility" means that the proposed minor communication utility and its associated equipment, including but not limited to additions to existing structures, new structures, poles, wireless antennae and conduit, must be designed and placed in a manner that will result in the least amount of visual and neighborhood character impacts. Potential impacts may include but will not be limited to aesthetics, height and bulk impacts, and commercial intrusion. Except

deviations as allowed by the Director, the proposed minor communication utility must comply the following order of preference:

- a. City Light transmission tower*
- b. Water tower*
- c. Rooftop or facade of a nonresidential structure*
- d. Rooftop or facade of a residential structure*
- e. Monopole on a nonresidential lot*
- f. Utility pole*

The Director may allow a deviation from the order of preference, including the allowance of other placement locations not contained in the order of preference, provided that the Director finds that such a deviation would result in a less intrusive facility than would otherwise be provided under strict adherence to the order of preference.

The proposal is located within a Single Family 5000 (SF 5000) zone on a non-arterial street, the most intrusive location as defined in the Director's Rule 8-2004. However, the proposal will be located on a City Water Tower, which is the second least intrusive facility, City Light Transmission Tower being first, to be located on. The applicant must consider a site which is the "least intrusive location" located on the "least intrusive facility" while also being able to "effectively provide telecommunication services". The geographical size of the single-family zones within the Magnolia neighborhood creates difficulties for siting telecommunication facilities in areas which are not zoned single-family while effectively providing telecommunication services to the neighborhood. The nearest commercial and multi-family zones are over quarter of a mile away towards the southeast and northeast and are located on a substantial lower geographic elevation point. No facilities or combination of facilities were found within these pocket zones which would provide an equivalent coverage area as proposed with the Magnolia Water Tower. There are no suitable City Light Transmission Towers located within ClearWire's proposal area to locate on. Given the proposal site is located on a very high geographic point and on a City Water Tower, balanced with the practical difficulties of providing effective telecommunication services to the Magnolia area, which is primarily zoned single-family, the subject site is the least intrusive and the water tower is the least obstructive, given the aforementioned circumstances.

The antennas and mounts will be located on a handrail around the main body of the water tower and painted to match the existing color of the tower to minimize visual impacts on surrounding uses. The design would render the antennas nearly camouflage from a distance. Due to the height of the water tower being approximately 100 feet above grade, there will be no substantial increase in bulk, view blockage and shadow impacts due to the antennas and dishes.

Per the acoustical Report dated March 15, 2006 from SSA, the noise level for the equipment cabinet is estimated to be at 23 dBA at the nearest receiving property line at 210 feet to the north, which is below the 60 dBA code limit. Traffic impact is not anticipated other than one service visit per month. The proposal would be compatible with uses allowed in the zone, and since no housing or structure will be removed, the proposal will not result in displacement of residential dwelling units.

As proposed, the minor communications utility will not constitute a commercial intrusion that will be substantially detrimental to the residential character of the surrounding neighborhood.

2. *The visual impacts that are addressed in section 23.57.016 shall be mitigated to the greatest extent practicable.*

The applicant has designed the size, shape and materials of the proposed utility to minimize negative visual impacts on adjacent or nearby residential areas. ClearWire will be essentially replacing the now defunct Metricom and will remove eleven existing antenna mounts (out of sixteen mounts), associated antennas and equipment cabinets. ClearWire will use five existing antenna mounts to locate their antennas on and will be locating their equipment cabinet in the same area as Metricom's was. Additionally, ClearWire will be using Metricom's existing electrical meter, cable tray and coax for power. The areas where the old Metricom antennas mounts were located will be restored to match the water tower and the proposed mounts and antennas will be painted to match the water tower as well.

As proposed, the visual impacts related to the minor communications utility have been mitigated to the greatest extent practicable.

3. *Within a Major Institution Overlay District, a Major Institution may locate a minor communication utility or an accessory communication device, either of which may be larger than permitted by the underlying zone, when:*

- a. *the antenna is at least four hundred feet (400') from a MIO boundary; and*
- b. *the antenna is substantially screened from the surrounding neighborhood's view.*

The proposed site is not located within a Major Institution Overlay; therefore, this provision is not applicable.

4. *If the minor communication utility is proposed to exceed the zone height limit, the applicant shall demonstrate that the requested height is the minimum necessary for the effective functioning of the minor communication utility.*

The antennas and dishes are proposed to be mounted on an existing handrail located approximately 71 feet above grade on an approximate 100-foot water tower, located within a SF 5000 zone with a height limit of 30 feet. Per the letter of certification signed and dated on May 20, 2006 by James Cornelius, P.E., the proposed height of the antennas is the minimum necessary to effectively provide service to the proposal area. The applicant supported this claim by providing a propagation map displaying the coverage area with and without the subject site in the current network configuration. A significant portion of the Magnolia area would be served by this one location.

The site was chosen because its elevation, location and existing water tower are uniquely suited to serve the surrounding area. No commercial properties were identified in the surrounding areas with sufficient elevation height to provide the coverage needed to meet the service objectives. The additional height above the zone development standard is the minimum required to attach the antennas to the water tower and obtain sufficient coverage.

5. *If the proposed minor communication utility is proposed to be a new freestanding transmission tower, the applicant shall demonstrate that it is not technically feasible for the proposed facility to be on another existing transmission tower or on an existing building in a manner that meets the applicable development standards. The location of a facility on a building on an alternative site or sites, including construction of a network that consists of a greater number of smaller less obtrusive utilities, shall be considered.*

The proposed minor communication utility is not proposed to be a new freestanding transmission tower. Therefore, this provision does not apply.

6. *If the proposed minor communication utility is for a personal wireless facility and it would be the third separate utility on the same lot, the applicant shall demonstrate that it meets the criteria contained in subsection 23.57.009 A. except for minor communication utilities located on freestanding water tower or similar facility.*

The proposed minor communication utility is located on a freestanding water tower; therefore, this provision does not apply.

DECISION - ADMINISTRATIVE CONDITIONAL USE PERMIT

This application to install a minor communication utility in a Single family zone, which exceeds the height limit of the underlying zone, is **CONDITIONALLY APPROVED**.

ANALYSIS - SEPA

The initial disclosure of the potential impacts from this project was made in the environmental checklist prepared by the applicant on November 2, 2005, and supplemental information in the project file submitted by the applicant. The information in the checklist, supplemental information, and the experience of the lead agency with review of similar projects forms the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, and certain neighborhood plans and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority. The Overview Policy states, in part, "*Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation,*" subject to some limitations. Under such limitations or circumstances (SMC 25.05.665 D), mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate. Short-term and long-term adverse impacts are anticipated from the proposal.

Short-term Impacts

The following temporary construction-related impacts are expected: 1) decreased air quality due to increased dust and other suspended particulates from building activities; 2) increased noise and vibration from construction operations and equipment; 3) increased traffic and parking demand from construction personnel; 4) blockage of streets by construction vehicles/activities; 5) conflict with normal pedestrian movement adjacent to the site; and 6) consumption of renewable and non-renewable resources.

Although not significant, the impacts are adverse and certain mitigation measures are appropriate as specified below.

City codes and/or ordinances apply to the proposal and will provide mitigation for some of the identified impacts. Specifically, these are: 1) Street Use Ordinance (watering streets to suppress dust, obstruction of the pedestrian right-of-way during construction, construction along the street right-of-way, and sidewalk repair); and 2) Building Code (construction measures in general). Compliance with these applicable codes and ordinances will be adequate to achieve sufficient mitigation and further

mitigation by imposing specific conditions is not necessary for these impacts. The proposal is located within residential receptors that would be adversely impacted by construction noise. Therefore, additional discussion of noise impacts is warranted.

Construction Noise

The limitations of the Noise Ordinance (construction noise) are considered inadequate to mitigate the potential noise impacts associated with construction activities. The SEPA Policies at SMC 25.05.675 B allow the Director to limit the hours of construction to mitigate adverse noise impacts. Pursuant to this policy and because of the proximity of neighboring residential uses, the applicant will be required to limit excavation, foundation, and external construction work for this project to non-holiday weekdays between 7:30 a.m. and 6:00 p.m. It is also recognized that there are quiet non-construction activities that can be done at any time such as, but not limited to, site security, surveillance, monitoring for weather protection, checking tarps, surveying, and walking on and around the site and structure. These types of activities are not considered construction and will not be limited by the conditions imposed on this Master Use Permit.

Long-term Impacts

Long-term or use-related impacts are also anticipated, as a result of approval of this proposal including: increased traffic in the area and increased demand for parking due to maintenance of the facility; and increased demand for public services and utilities. These impacts are minor in scope and do not warrant additional conditioning pursuant to SEPA policies.

Environmental Health

The Federal Communications Commission (FCC) has pre-empted state and local governments from regulating personal wireless service facilities on the basis of environmental effects of radio frequency emissions. As such, no mitigation measures are warranted pursuant to the SEPA Overview Policy (SMC 25.05.665).

The applicant has submitted a "Statement of Federal Communication Commission Compliance for Personal Wireless Service Facility" and an accompanying "Affidavit of Qualification and Certification" for this proposed facility giving the calculations of radio frequency power density expected from this proposal and attesting to the qualifications of the Professional Engineer who made this assessment. Additionally, an outside third party reviewer selected from a Director approved list has reviewed the applicant's technical information and finds the information submitted is accurate. This complies with the Seattle Municipal Code Section 25.10.300 that contains Electromagnetic Radiation standards with which the proposal must conform. The Department's experience with review of this type of installation is that the EMR emissions constitute a small fraction of that permitted under both Federal standards and the standards of SMC 25.10.300 and therefore, pose no threat to public health. Warning signs at every point of access to the transmitting antenna shall be posted with information of the existence of radiofrequency radiation.

Summary

In conclusion, several effects on the environment would result from the proposed development. The conditions imposed at the end of this report are intended to mitigate specific impacts identified in the

foregoing analysis, to control impacts not adequately regulated by codes or ordinances, per adopted City policies.

DECISION - SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination and form. The intent of this declaration is to satisfy the requirements of the State Environmental Policy Act (RCW 43.21C), including the requirement to inform the public agency decisions pursuant to SEPA.

- [X] Determination of Non-Significance. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21C.030 2c.
- [] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030 2c.

CONDITIONS - ADMINISTRATIVE CONDITIONAL USE

1. The owner(s) and/or responsible party(s) shall provide ensure that the antennas, support structures and equipment cabinet are painted to blend with the color (non-glare) of the water tower.
2. The existing unused Metricom antennas and mounts shall be removed and these areas where the old Metricom mounts were located will be restored to match the water tower.

Land Use Code Requirement (Non Appealable) Prior to Issuance of MUP

3. The owner(s) and/or responsible party(s) shall update the official MUP plan set to provide access and signage in accordance with Section 23.57.010E4 which restricts access to minor communications utilities to authorized personnel. The proposal to restrict access shall not interfere with Seattle Public Utilities ability to conduct general maintenance and provide appropriate security for the subject site. This shall be to the satisfaction of the Land Use Planner.

CONDITION - SEPA

During Construction

4. The following conditions to be enforced during construction shall be posted at the site in a location visible and accessible to the public and to construction personnel from the street right-of-way. The condition shall be printed legibly on placards available from DPD, shall be laminated with clear plastic or other weatherproofing material, and shall remain in place for the duration of the construction.

The applicant shall limit external construction work for this project to non-holiday weekdays between 7:30 a.m. and 6:00 p.m.

Signature: (signature on file) Date: June 12, 2006

Mark Taylor, Land Use Planner

Department of Design Planning & Development

MJT:rgc

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